

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KEN E. KISER)	
Claimant)	
)	
VS.)	
)	
LAW COMPANY INC.)	
Respondent)	Docket No. 1,019,600
)	
AND)	
)	
ST. PAUL FIRE & MARINE INS. CO.)	
Insurance Carrier)	

KEN E. KISER)	
Claimant)	
)	
VS.)	
)	
JENKINS & ASSOCIATES INC.)	
Respondent)	Docket No. 1,024,487
)	
AND)	
)	
BUILDER'S ASSN. SELF- INS. FUND)	
Insurance Carrier)	

ORDER

The Law Company, Inc. and St. Paul Fire & Marine Insurance Co. request review of the January 3, 2006 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The claimant alleged repetitive injuries to his right wrist each and every day worked for both respondents. The claims were consolidated and at the preliminary hearing

claimant requested treatment for his right wrist. The Administrative Law Judge (ALJ) determined claimant's current need for treatment was caused by his employment with respondent, Law Company, Inc., (Law Co.) and ordered it to provide medical treatment.

Respondent, Law Co., requests review and argues claimant's current need for medical treatment is the natural and probable consequence of his previously diagnosed right carpal tunnel syndrome which recurred and was again diagnosed while claimant worked for respondent, Jenkins & Associates (Jenkins). In the alternative, Law Co. argues the claimant continued to aggravate his condition with work activities performed after he left the Law Co.'s employment.

Claimant argues that his right hand had been asymptomatic for years before his right hand was injured while working for Jenkins but further argues his hand condition was significantly worsened while working for respondent, Law Co. And that condition has remained the same and did not worsen during claimant's sporadic work activities after leaving the Law Co.'s employment. Consequently, claimant requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working as a carpenter for Jenkins on June 5, 2003. Within a month he began to experience numbness, tingling and pain in his right hand as a result of his repetitive work activities. Claimant was diagnosed with moderate right carpal tunnel syndrome. A surgical consult was scheduled but canceled when Jenkin's insurance carrier denied claimant's injuries were work-related.

Because his employment with Jenkins had terminated, claimant moved to Wichita and went to work on September 23, 2003, for the Law Co. as a carpenter. As claimant continued working his hand complaints worsened. Claimant continued working for the Law Co. until he suffered a left shoulder injury in October 2004. Claimant was released to return to work in February 2005 from his shoulder injury. He did not return to work for the Law Co. The claimant's wrist and hand did not improve while he was off work with his shoulder injury. No medical treatment was provided for his wrist and hand.

After treatment for his shoulder claimant was released to work and has engaged in carpentry work activities on a sporadic basis but noted that his hand complaints have remained at the same level as when he left the Law Co.'s employment. He further noted that he now works at a slower pace, takes frequent breaks and uses his left hand more while performing work activities.

Dr. Michael J. Poppa opined:

Mr. Kiser's employment at The Law Company, Inc. was the direct and proximate cause of his resulting condition involving his right upper extremity/wrist, as described above. This condition became worse during the course and scope of his employment. Although Mr. Kiser states his right hand became symptomatic while employed by Jenkins & Associates, his employment at The Law Company increased his symptoms causing a worsening of his condition secondary to his work related duties as a commercial carpenter.¹

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.² The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated, accelerated or intensified the condition.³ In general, the question of whether the worsening of claimant's preexisting condition is compensable as a new, separate and distinct accidental injury under workers compensation turns on whether claimant's subsequent work activity for the Law Co. aggravated, accelerated or intensified the underlying disease or affliction.⁴

Claimant's uncontradicted testimony established that his right hand pain and symptoms significantly worsened as he continued working for the Law Co. for approximately a year after he left employment with Jenkins. Dr. Poppa opined claimant's work activities for the Law Co. caused a worsening of his right carpal tunnel syndrome.

In this instance, based upon the record compiled to date, the Board finds that claimant's condition did arise out of his employment with respondent, Law Co. Accordingly, the Board affirms the ALJ's Order.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated January 3, 2006, is affirmed.

IT IS SO ORDERED.

¹ P.H. Trans., Cl. Ex. 1 at 4.

² *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

³ *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁴ *See Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, *rev. denied* 265 Kan. 884 (1998).

Dated this _____ day of February 2006.

BOARD MEMBER

- c: Michael H. Stang, Attorney for Claimant
Vincent A. Burnett, Attorney for Law Company Inc. & St. Paul Fire & Marine
Wade A. Dorothy, Attorney for Jenkins & Assoc. Inc. & Builder's Assn. S/I Fund
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director